
INVITATION FOR BID

IFB No:
HHSC 13-0067

COMPETITIVE SEALED BID
TO PROVIDE:

Fire Suppression System in the
Corporate Computer Center

for

Hawaii Health Systems Corporation

Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816

An Agency of the State of Hawaii

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SECTION 1

ADMINISTRATION

1.0 INTRODUCTION

This Invitation for Bid (hereinafter “IFB”) is issued by the Hawaii Health Systems Corporation (hereinafter “HHSC”), a public body corporate and politic and an instrumentality and Agency of the State of Hawaii. This solicitation is governed by the provisions of Hawaii Revised Statutes (“HRS”) Chapter 103D and its implementing rules. All procedures and processes will be in accordance with HRS Chapters 103D and 323F. To the extent this solicitation contains any terms or provisions inconsistent with HRS Chapter 103D and its implementing rules, the statutes and the rules will control.

Thank you for your interest in submitting a bid for this solicitation. Hereinafter, organizations interested in submitting a bid in response to this IFB shall be referred to as “BIDDER”.

In order for HHSC to evaluate BIDDER’S response in a timely manner, please thoroughly read this IFB and follow instructions as presented.

1.1 IFB TIMETABLE AS FOLLOWS

The timetable as presented represents HHSC’s best estimated schedule. If an activity of the timetable, such as “Closing Date for Receipt of Bids” is delayed, the rest of the timetable dates may be shifted. BIDDER will be advised, by addendum to the IFB, of any changes to the timetable. Contract start date will be subject to the issuance of a Notice to Proceed. **Note: To be considered for award, BIDDER must attend the mandatory facility walkthrough as described in sections 1.12.**

ACTIVITY		SCHEDULED DATES
1.	IFB Public Announcement	September 7, 2012
2.	Mandatory Facility Walkthrough	September 12, 2012
3.	Closing Date for Receipt of Questions by Bidders	September 14, 2012
4.	Addendum for HHSC Response to BIDDER’s Questions	September 17, 2012
5.	Closing Date for Receipt of Bids	September 24, 2012 - No Later Than 2:00 p.m., HST
6.	Opening and Recording of Bids	September 24, 2012, 2:30pm, HST
7.	Contractor Selection/Award Notification (on/about)	September 25, 2012
8.	Contract Execution Period	September 26-28, 2012
9.	Contract Tentative Award Date	October 1, 2012

1.2 AUTHORITY

This IFB is issued under the provisions of the Hawaii Revised Statutes (HRS), Chapter 103D and its administrative rules. All BIDDERS are charged with presumptive knowledge of all requirements of the cited authorities. Submission of a valid executed Bid by any BIDDER shall constitute admission of such knowledge on the part of such BIDDER.

1.2.1 IFB ORGANIZATION

This IFB is organized into four sections:

SECTION 1: ADMINISTRATIVE

Provides information regarding administrative requirements.

SECTION 2: SCOPE OF SERVICES

Provides a detailed description of goods and/or services to be provided and delineates HHSC and CONTRACTOR responsibilities.

SECTION 3: BID FORMS AND INSTRUCTIONS

Describes the required format and content for submission of a bid.

SECTION 4: BID EVALUATION AND AWARD

Describes how Bids will be evaluated and procedures for selection and award of contract.

1.3 HEAD OF PURCHASING AGENCY (HOPA)

The HOPA for HHSC, or designee, is authorized to execute any and all Agreements (Contracts), resulting from this IFB.

The HOPA for this IFB is:

Edward N. Chu
Chief Financial Officer
Hawaii Health Systems Corporation

1.4 DESIGNATED OFFICIALS

The officials identified in the following paragraphs have been designated by the HOPA as HHSC's procurement officials responsible for execution of this IFB, award of Agreement and coordination of CONTRACTOR's satisfactory completion of contract requirements.

1.4.1 ISSUING OFFICER

The Issuing Officer is responsible for administering/facilitating all requirements of the IFB solicitation process and is the **sole point of contact** for BIDDER from date of public announcement of the IFB until the selection of the successful BIDDER. The Issuing Officer will also serve as the Contract Manager responsible for **contractual actions** throughout the term of the contract.

The Issuing Officer is:

Dean Matro, Contracts Manager
HHSC
3675 Kilauea Avenue, Honolulu, HI 96816
PH: 808.733.4662
FAX: 808.733.4460
dmatro@hhsc.org

1.5 HHSC ORGANIZATIONAL INFORMATION

1.5.1 CHARTER

HHSC is a public body corporate and politic and an instrumentality and agency of the State of Hawaii. HHSC is administratively attached to the Department of Health, State of Hawaii and was created by the legislature with passage of Act 262, Session Laws of the State of Hawaii 1996. Act 262 affirms the State's commitment to provide quality health care for the people in the State of Hawaii, including those served by small rural facilities.

1.5.2 STRUCTURE AND SERVICES

HHSC oversees the operation of twelve public health facilities throughout the Hawaiian Island chain, including Oahu, Lanai, Maui, Kauai and Hawaii. In addition to the twelve HHSC facilities, Kahuku Medical Center is a wholly owned subsidiary and is included in this solicitation.

HHSC is organized into five operational regions and provides a broad range of healthcare services including acute, long term, rural and ambulatory health care services. As the fourth largest public health system in the country, HHSC is the largest provider of healthcare in the Islands, other than on Oahu, and is the only acute care provider on the Islands of Maui and Lanai. In fiscal year 2010, HHSC had a total of 3,879 full time employees, operating 1,275 licensed beds, located on five different islands, with approximately 22,378 in-patient admissions.

1.5.3 MISSION

The mission of HHSC is to provide and enhance accessible, comprehensive health care services that are quality-driven, customer-focused and cost-effective.

1.6 FACILITY INFORMATION

Detailed information pertaining to HHSC facilities is located at <http://www.hhsc.org>.

1.7 SUBMISSION OF QUESTIONS

Questions must be submitted in writing via electronic mail or post mail to the Issuing Officer no later than the "Closing Date for Receipt of Questions", identified in paragraph 1.1 in order to generate an official answer. All written questions will receive an official written response from HHSC and become addenda to the IFB.

- IMPORTANT -

BIDDERS must accept the attached HHSC General and Special Terms and Conditions, for it shall be made part of the resultant contract.

HHSC reserves the right to reject or deny any request(s) made by BIDDER.

Responses by HHSC shall be due to the BIDDER no later than the dates for initial questions and final questions stipulated in Section 1.1.

Impromptu, un-written questions are permitted and verbal answers will be provided during pre-Bid conferences and other occasions, but are only intended as general direction and will not represent the official HHSC position. The only official position of HHSC is that which is stated in writing and issued in the IFB as addenda thereto.

No other means of communication, whether oral or written, shall be construed as a formal or official response/statement and may not be relied upon.

SEND QUESTIONS TO:

Dean Matro, Contracts Manager
HHSC, 3675 Kilauea Ave., Honolulu, HI 96816
Fax: 808.733.4460
Email: dmatro@hhsc.org

1.8 SOLICITATION REVIEW

BIDDER should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be made in writing and should be received by the Issuing Officer, **Dean Matro, Contracts Manager**, no later than the “Closing Date for Receipt of Questions” as identified in Section 1.1. This will allow issuance of any necessary amendments to the IFB. It will also assist in preventing the opening of Bids upon which award may not be made due to a defective solicitation package.

1.9 IFB AMENDMENTS

HHSC reserves the right to amend the IFB any time prior to the ending date for the Bid evaluation period. IFB Amendments will be in the form of addenda. BIDDER is expected to acknowledge all amendments issued under this IFB by stating the number of amendments issued in the Bid Transmittal Cover Letter (Attachment B).

1.10 CANCELLATION OF IFB

The IFB may be canceled when it is determined to be in the best interests of HHSC.

1.11 PROTESTS

Pursuant to HRS §103D-701, an actual or prospective BIDDER who is aggrieved in connection with the solicitation or award of the contract may submit a protest. Any protest shall be submitted in writing to the HOPA as noted below.

A protest based upon the content of the solicitation shall be submitted in writing within five (5) working days **after** the aggrieved individual/business knows or should have known of the facts giving rise thereto; provided further that the protest shall not be considered unless it is submitted in writing prior to and not later than the “Closing Date for Receipt of Bids” identified in section 1.1.

A protest of an award or proposed award shall be submitted within five (5) working days after the posting the contract award as detailed in HRS 103D and its implementing rules. The notice of award, if any, resulting from this solicitation shall be posted in the Hawaii State Procurement Reporting System website: <http://www.hawaii.gov/spo2/source/>.

Any and all protests shall be submitted in writing to the HOPA, as follows:

Edward N. Chu
Chief Financial Officer
Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816

1.12 FACILITY WALKTHROUGH

A facility walkthrough is scheduled at the Leahi Hospital Lobby Conference Room for **Wednesday, September 12, 2012 at 10:30am**. Leahi Hospital is located at 3675 Kilauea Avenue, Honolulu, HI 96816. **All interested BIDDERS must be represented at this walkthrough in order for their bid to be considered for an award.** Pertinent information specific to the computer center will be announced, followed by a tour of the computer center. Questions are welcomed and will be answered for everyone's benefit.

1.13 INTENT TO BID

BIDDER will submit an Intent to Bid form as found in APPENDIX A to the Issuing Officer by Tuesday, September 11, 2012, at 4pm. Intent to Bid forms may be submitted via email, fax, mail (USPS), ship (FedEX or UPS), or hand delivered.

SECTION 2

SCOPE OF SERVICES

2.0 INTRODUCTION

The purpose of this competitive solicitation is to award a single fixed-priced Agreement for a CONTRACTOR to install a **“Fire Suppression System in the Corporate Computer Center”** located at Leahi Hospital, 3675 Kilauea Avenue, Honolulu, HI 96816.

The BIDDER awarded a contract under this IFB shall be referred to as “CONTRACTOR”.

2.1 CONTRACT PERIOD

The term of contract shall be for two (2) years, with three (3) 1-year options to extend the term.

2.2 SCOPE OF SERVICES

The CONTRACTOR shall provide a “Fire Suppression System”, pursuant to provisions of the Scope of Services, as described below; and pursuant to the HHSC General and Special Conditions of the IFB, at the facility identified in Section 2.0.

2.3 GENERAL REQUIREMENTS

The CONTRACTOR shall provide and install either a pre-action (dry pipe) or FM200 system in the HHSC corporate computer center. The center is comprised of two adjacent rooms. The main room is approximately 650 square feet and the other room is approximately 300 square feet.

2.3.1 Fire Suppression System. The CONTRACTOR shall provide the labor, equipment and materials necessary to install a fire suppression system capable of providing fire protection in the corporate computer center.

2.3.2 Test. The CONTRACTOR shall inspect and test the system to ensure proper operation prior to delivery to HHSC. The results of the successful test shall be documented and a written report shall be submitted to the technical representative.

2.3.3 Warranty. The CONTRACTOR shall provide a warranty for the fire suppression system, and its installation, for at least one (1) year after delivery of the system.

2.3.4 Completion Date. The CONTRACTOR shall complete the installation within 90 days of the “Notice to Proceed” date.

2.3.5 Coordinate Work Schedules. CONTRACTOR shall coordinate work schedules, and get agreement, with the technical representatives, to ensure timely access to the computer center.

2.3.6 Allow the technical representatives to witness and monitor installation activity.

2.4 HHSC DUTIES AND RESPONSIBILITIES

2.4.1 Make available, during normal business hours, the corporate computer center to install and test the fire suppression system.

2.4.2 The technical representative shall coordinate with the CONTRACTOR the installation and testing schedule to minimize any conflicts due to the operations of the corporate computer center.

2.4.3 The technical representatives and/or designees have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing CONTRACTOR performance; placing requests for services; and, approving completed work/services with verification of same for CONTRACTOR's invoices. Technical representatives will also serve as points of contact for "technical" matters throughout the term of the contract. The HHSC Technical Representatives are James Brady (jbrady@hhsc.org, 808.733.4090) and Jeffrey Furukawa (jfurukawa@hhsc.org, 808.733.9886).

SECTION 3

BID FORMS AND INSTRUCTIONS

3.0 GENERAL INSTRUCTIONS FOR COMPLETING BID PACKAGES

- *Bid packages shall be submitted in the prescribed format outlined in this IFB.*
- *No supplemental literature, brochures or other unsolicited information should be included.*
- *A written response is required for each item unless indicated otherwise.*

3.1 COMPLETE BID PACKAGE

A complete bid package consists of two items.

3.1.1 **BID TRANSMITTAL COVER LETTER.** BIDDER is required to submit a transmittal cover letter. The transmittal cover letter must be on the BIDDER'S official business letterhead; an original signature signed in ink by an individual authorized to legally bind the BIDDER; affixed with the corporate seal or notarized; and minimally include information, as written/requested, on the "sample" letter found in APPENDIX B. BIDDER shall submit their bid under their exact legal name that is registered with the Department of Commerce and Consumer Affairs and shall indicate this exact legal name in the appropriate space. Failure to do so may delay proper execution of the Contract.

3.1.2 **BID SHEET.** Complete the bid sheet as found in APPENDIX C. It is in the bid sheet the BIDDER states the proposed solution, addresses why it believes the solution will meet the needs of HHSC, and submits the bid price.

3.2 SUBMISSION OF BID PACKAGE

Each BIDDER may submit only one (1) written bid package. Alternate bid packages will not be accepted. The Issuing Officer must receive one **sealed** Bid Package containing (1) originally signed Transmittal Letter, and (1) Bid, no later than the "Closing Date for Receipt of Bids", identified in Section 1.1. **Bid Packages received after this time/date will be rejected.** The outside cover of the sealed Bid Package should be noticeably marked, as follows:

"Bid Package Submitted to Dean Matro in Response to: IFB # HHSC 13-0067"

Bid Package may be submitted in one of two ways:

Mail (USPS) or ship (FedEx, UPS) Bid Packages to:

Dean Matro, Contracts Manager
Re: IFB No. HHSC 13-0067
Hawaii Health Systems Corporation
3675 Kilauea Avenue
Honolulu, Hawaii 96816

Hand deliver Bid Packages to:

Dean Matro, Contracts Manager
Re: IFB No. HHSC 13-0067
Hawaii Health Systems Corporation
3628 Kilauea Avenue
Honolulu, Hawaii 96816

Bid Packages submitted through facsimile transmission or email shall not be accepted.

3.3 PUBLIC INSPECTION

Bid packages shall be opened publicly, and be opened in the presence of two or more HHSC employees in the HHSC Conference Room. The names of BIDDERS who submitted bid packages will be written down in a log. All bid packages become the property of HHSC and may be returned only at HHSC's option.

3.4 COSTS FOR BID PACKAGE PREPARATION

Any and all costs incurred in the development of the bid package, i.e. preparing and submitting, on-site product/ service demonstrations, on-site visits, oral presentations, travel and lodging, etc. shall be the sole responsibility of BIDDER.

SECTION 4

BID EVALUATION AND AWARD

4.0 INTRODUCTION

Each bid will be reviewed for exact conformity of the requirements in the IFB, known as a responsive bid. Information provided in/with the bid package will be used to determine whether the interested BIDDER has the technical and financial capacity to deliver the goods or services, known as a responsible BIDDER.

4.1 BID EVALUATION

Each bid package will be evaluated. The first step is to evaluate the bid package to determine whether or not a BIDDER is responsive. Then, the next step is to determine whether or not a BIDDER is responsible. Finally, price will be evaluated.

4.2 METHOD OF AWARD

It is the intent of HHSC to award a single contract to the lowest responsible and responsive BIDDER.

Awarding a contract will be at the sole discretion of the HHSC. Nothing in this IFB shall be construed or interpreted to mean that HHSC is obligated to award a contract.

4.3 CONTRACT EXECUTION

Upon receipt of the Contract document, the CONTRACTOR shall have ten (10) business days to execute and return the Contract to the Issuing Officer. Explicit execution instructions will accompany the Contract. A copy of the fully executed Contract will be provided the CONTRACTOR within seven (7) business days of Contract execution.

Award of Contract may be withdrawn if the CONTRACTOR is unable to meet Contract execution requirements.

4.4 CONTRACT DOCUMENT

In the event of an award, the contract will be awarded by executing an **“Agreement for Goods or Services Based Upon Competitive Sealed Bids”** (hereinafter “CONTRACT”) by HHSC and the successful BIDDER (hereinafter “CONTRACTOR”). This document will serve as the official, legal contractual instrument between both parties. This document will incorporate (by attachments or reference) the IFB, with any and all addendums; GENERAL CONDITIONS and any SPECIAL CONDITIONS; and the CONTRACTOR’s accepted Bid, with any and all addendums, changes, negotiated agreements, all of which becomes part and whole of the CONTRACT. A “sample” CONTRACT is located at APPENDIX D. **Please DO NOT complete or execute the “sample” CONTRACT.**

4.5 GENERAL AND SPECIAL CONDITIONS:

The GENERAL CONDITIONS - NON-PHYSICIAN HEALTHCARE SERVICES, found as an attachment to the sample contract, are non-negotiable and are applicable and shall be part and whole and attached to the Agreement.

Of particular significance, please note/review the following requirements:

4.6 GENERAL EXCISE/USE TAX

4.6.1 Refer to the GENERAL CONDITIONS - NON-PHYSICIAN HEALTHCARE SERVICES. Work to be performed under this solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (HRS), and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii CONTRACTOR are advised that the gross receipts derived from this solicitation are subject to the general excise tax imposed by Chapter 237, HRS, and where applicable to tangible property imported into the State of Hawaii for resale, subject to the use tax imposed by Chapter 28, HRS.

4.6.2 Pursuant to Section 237-9, HRS, the CONTRACTOR is required to obtain and/or possess a valid General Excise Tax License from the Hawaii State Department of Taxation (DOTAX) prior to executing a contractual agreement with a State Agency (Reference the GENERAL CONDITIONS - NON-PHYSICIAN HEALTHCARE SERVICES).

4.7 HAWAII COMPLIANCE EXPRESS

BIDDERS must apply for and obtain proof of compliance through the Hawaii State Procurement Office's "Hawaii Compliance Express website at <http://vendors.ehawaii.gov>

One interface covers all the required forms from all state agencies and partners to do business in Hawaii. Easy to read instructions and context sensitive help make compliance safe, fast and efficient. Using the Wizard will file with Department of Taxation and optionally with the Business Registration Division of the DCAA. If you have or will have employees, the Wizard will also file with Department of Labor and Industrial Relations.

BIDDERS who elect to use the services will be required to pay an annual fee of approximately \$15.00.

4.8 CONTRACT COMMENCEMENT DATE

Upon completion of CONTRACT execution requirements, a "**Notice to Proceed**" letter will be provided the CONTRACTOR specifying the "Commencement" (start work) date of the CONTRACT. No work is to be undertaken by the CONTRACTOR prior to the commencement date specified in the Notice to Proceed letter. HHSC is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the CONTRACTOR prior to the official, notice to proceed "Commencement" date.

INTENT TO BID FORM

_____ intends to submit a bid under IFB HHSC 13-0067
(Enter name of Business)

for a Fire Suppression System in the Corporate Computer Center. We understand that in order to be eligible for an award, we must have representation at the mandatory facility walkthrough. Representation is determined by having someone present and signing-in on behalf of the Business. We intend to be represented at the walkthrough.

We further understand that signing this Intent to Bid Form does not require us to submit a bid against this solicitation.

Signature

Printed Name and Title

Name of Business

Date

SAMPLE BID TRANSMITTAL COVER LETTER

Mr. Matro:

(Name of Business) proposes to provide any and all goods and services as set forth in the "Invitation for Bids" to provide **"Fire Suppression System in the Corporate Computer Center" IFB # HHSC 13-0067.**

It is understood and agreed that (Name of Business) have read HHSC's Scope of Services described in the IFB, acknowledge that (Number of Amendments) amendments have been issued under the IFB, and that this Bid is made in accordance with the provisions of such Scope of Services. By signing this Bid, (Name of Business) guarantee and certify that all items included in this Bid meet or exceed any and all such Scope of Services.

(Name of Business) agree, if awarded the contract, to provide the goods and services set forth in the IFB; and comply with all terms and conditions indicated in the IFB; and at the price set forth in this Bid. The following individual(s) may be contacted regarding this Bid:

(Name, telephone number, email address)

(Name, telephone number, email address)

Other business information:

Business Phone #:		Federal Tax ID #:	
Facsimile #:		Hawaii GET Lic. ID #:	
E-mail address:			

(Name of Business) is a: ☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture
Other (Specify)

State of Incorporation is: (Specify)

The exact legal name of the business under which the contract, if awarded, shall be executed is: _____
_____.

(Authorized BIDDER's Signature, Printed Name/Title; Corporate Seal or Notarized)

Encl: Bid Sheet

BID SHEET

Identify in writing the fire suppression system to be installed, address why it will meet the needs of HHSC, and state the bid price of such system.

Name of Bidder
Identify the name and model of Fire Suppression System to be installed. Identify all accessories and subsystems as necessary.
Address how the Fire Suppression System identified above will provide fire suppression in the corporate computer center. Attach up to 2 additional sheets (8.5in x 11in) if needed.
Bid Price of Delivered Fire Suppression System (Price should include all costs, fees, and taxes)

**HAWAII HEALTH SYSTEMS CORPORATION
AGREEMENT FOR GOODS OR SERVICES
BASED UPON
COMPETITIVE SEALED BIDS**

AGREEMENT #: FY _____

THIS AGREEMENT, executed on the respective dates of the signatures of the parties shown hereafter, is effective as of *[Insert Month Day, Year – Or - you can add language: “the date of last execution signature”]*, between the **Hawaii Health Systems Corporation** (hereinafter "HHSC"), by its Chief Executive Officer, (hereinafter "CEO"), whose address is 3675 Kilauea Avenue, Honolulu, Hawaii 96816, and *[Insert Vendor Name]* (hereinafter "CONTRACTOR"), a *[Insert corporation, partnership, sole proprietorship, or other legal form of the Contractor]*, under the laws of the State of *[Insert State of Incorporation]*, whose business address is *[Insert Contractor Address]* and taxpayer identification number, Tax ID #: Hawaii Tax No. XXXXX; FEIN No. XXXXXX.

RECITALS

A. The HHSC desires to retain and engage the CONTRACTOR to provide the goods or services, or both, described in this Agreement and its attachments, and the CONTRACTOR is agreeable to providing said goods and services, or both.

B. The HHSC has issued an invitation for competitive sealed bids, and has received and reviewed bids submitted in response to the invitation.

C. The solicitation for bids and the selection of the CONTRACTOR were made in accordance with section 103D-302, Hawaii Revised Statutes ("HRS"), Hawaii Administrative Rules ("HAR") Title 3, Department of Accounting and General Services, Subtitle 11, Chapter 122 Subchapter 5, and applicable procedures established by HHSC.

D. The CONTRACTOR has been identified as the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for the HHSC, taking into consideration price and the evaluation factors set forth in the request.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the HHSC and the CONTRACTOR agree as follows:

1. SCOPE OF SERVICES. The CONTRACTOR shall, in a proper and satisfactory manner as determined by the HHSC, provide all the goods or services set forth in the Invitation for Bids, ("IFB") # HHSC _____ ("IFB"), and the CONTRACTOR'S accepted bid (collectively "BID"), both of which, even if not physically attached to this Agreement, are hereby made a part of this Agreement.

2. TIME OF PERFORMANCE. The services or goods required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the Time of Performance set forth in the Attachment 2, which is made a part of this Agreement.

3. COMPENSATION. The CONTRACTOR shall be compensated for goods supplied or services performed, or both, under this Agreement in a total amount not to exceed _____ DOLLARS (\$000,000.00), including approved costs incurred and taxes, at the time and in the manner set forth in the IFB and CONTRACTOR'S Bid.

4. BONDS. The CONTRACTOR ☐ (is) or ☐ (is not) required to provide: ☐ a performance bond, ☐ a payment bond, ☐ a performance and payment bond in the amount of _____ DOLLARS (\$000,000.00).

5. STANDARDS OF CONDUCT DECLARATION. The Standards of Conduct Declaration of the CONTRACTOR is attached and is made a part of this Agreement.

6. OTHER TERMS AND CONDITIONS. The General Conditions and any Special Conditions are attached hereto and made a part of this Agreement. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. In the event of a conflict among the documents, the order of precedence shall be as follows: (1) this Agreement, including all attachments and addenda; (2) the IFB, including all attachments and addenda; and (3) the CONTRACTOR'S Bid.

7. LIQUIDATED DAMAGES. Liquidated damages shall be assessed in the amount of _____ DOLLARS (\$000,000.00) per day, in accordance with the terms of paragraph 9 of the General Conditions.

8. NOTICES. Any written notice required to be given by any party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the CEO shall be sent to: HHSC, President & Chief Executive Officer, HHSC, 3675 Kilauea Avenue, Honolulu, Hawaii 96816. Notice to the "head of the purchasing agency" and/or "Agency Procurement Officer" as denoted in the General Conditions shall be sent to: HHSC, Attn: Procurement Office, 3675 Kilauea Avenue, Honolulu, Hawaii 96816. Notice to the CONTRACTOR shall be sent to the CONTRACTOR'S address as indicated in this Agreement. A notice shall be deemed to have been received three (3) days after mailing or at the time or actual receipt, whichever is earlier. The CONTRACTOR is responsible for notifying the HHSC in writing of any change of address.

IN VIEW OF THE ABOVE, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

HHSC:

(Signature)

Edward N. Chu
(Printed Name)

HHSC Chief Financial Officer
(Title)

(Date)

CONTRACTOR:

Sample Contract – Do Not Sign
(Signature)

(Printed Name)

(Title)

(Date)

CERTIFICATE OF EXEMPTION FROM CIVIL SERVICE

I certify that the services to be provided under this Agreement by the CONTRACTOR may be performed concurrently with the CONTRACTOR'S private business or profession or other private employment, and that it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State or HHSC. Pursuant to section 76-16(15), Hawaii Revised Statutes, the services are exempt from the state civil service.

Edward N. Chu
Chief Financial Officer
Hawaii Health Systems Corporation

Date: _____

STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty percent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the State or HHSC, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

On behalf of _____, CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR ☐ IS or ☐ IS NOT a legislator or an employee or a business in which a legislator or an employee has a controlling interest.*
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a State or HHSC employee or, in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the State or HHSC within the preceding two (2) years and who participated while in state office or employment on the matter with which the Agreement is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been a State or HHSC employee, or in the case of the Legislature, a legislator.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, 1) within the past twelve (12) months, served as a State or HHSC employee or in the case of the Legislature, a legislator, and b) participated while an employee or legislator on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the State or HHSC if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the Code of Ethics, including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the State or HHSC.

CONTRACTOR

By: Sample – Do Not Sign

Title: _____

Date: _____

*Reminder to FACILITY: if "is" is circled, YOUR FACILITY is required, under section 84-15, Hawaii Revised Statutes, to file with the State Ethics Commission, ten (10) days before the Agreement is entered into, a written justification as to why the Agreement was not required to be competitively bid.

SCOPE OF SERVICES

TIME OF PERFORMANCE

1. The CONTRACTOR shall provide the services required under this Agreement for a period of Two (2) years from “the date of last execution signature”] OR - _____, 2012 to and including _____, 2014, unless sooner terminated or extended as provided.
2. **OPTION TO EXTEND:** The TIME OF PERFORMANCE of this Agreement may be extended for Three (3) additional one (1) year intervals, subject to mutual written agreement between HHSC and the CONTRACTOR prior to the end of the current contract period. A Supplemental Agreement will be executed by the CONTRACTOR and HHSC to exercise extensions.

COMPENSATION AND PAYMENT SCHEDULE

In full consideration for the services to be performed by the CONTRACTOR under this Agreement, the HHSC agrees, subject to appropriation and allotments, to pay to the CONTRACTOR a total sum of money not to exceed _____ **DOLLARS (\$000,000.00)**, including all applicable taxes and expenses incurred, and in accordance with the following:

The CONTRACTOR shall submit invoices for approval and payment to the Hospital's "Technical Representative(s)" in accordance with provisions of paragraph 20 of the GENERAL CONDITIONS. Invoices shall reference the Agreement number and include, at a minimum, an itemized account of all compensation due.

HOSPITAL TECHNICAL REPRESENTATIVE

Kauai Region

[Insert Name and Title of TR]

Kauai Veterans Memorial Hospital
4643 Waimea Canyon Rd.
Waimea, HI 96796
Phone: 808-
Email: @hhsc.org

East Hawaii Region

[Insert Name and Title of TR]

Hilo Medical Center
1190 Waianuenue Ave.
Hilo, HI 96720
Phone: 808-
Email: @hhsc.org

Maui Region

[Insert Name and Title of TR]

Maui Memorial Medical Center
221 Mahalani St.
Wailuku, HI 96793
Phone: 808-
Email: @hhsc.org

West Hawaii Region

[Insert Name and Title of TR]

Kona Community Hospital
79-1019 Haukapila St.
Kealahakua, HI 96750
Phone: 808-

Email: @hhsc.org

Oahu Region

[Insert Name and Title of TR]

Maluhia Hospital
1027 Hala Drive
Honolulu, Hawaii 96817
Phone: 808-
Email: @hhsc.org

SPECIAL CONDITIONS

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HAWAII HEALTH SYSTEMS CORPORATION GENERAL CONDITIONS
(103D Goods and Non-Healthcare Services)

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1. **COORDINATION OF SERVICES BY HHSC.** The “head of the purchasing agency,” (through the Technical Representative(s), or other designee), shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Agreement. The CONTRACTOR shall maintain communications with the head of the purchasing agency through the Technical Representative(s) or other designee at all stages of the CONTRACTOR’s work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Agreement. “Purchasing agency” as used in these General Conditions means and includes any HHSC region or facility which is authorized to enter into contracts for the procurement of goods and services.
2. **RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.**
 - a. In the performance of services required under this Agreement, the CONTRACTOR is an “independent contractor,” with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, HHSC shall have a general right to inspect work in progress to determine whether, in HHSC’s opinion, the services are being performed by the CONTRACTOR in compliance with this Agreement. Unless otherwise provided by special condition, it is understood that HHSC does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with HHSC.
 - b. The CONTRACTOR and the CONTRACTOR’s employees and agents are not by reason of this Agreement, agents or employees of HHSC for any purpose, and the CONTRACTOR and the CONTRACTOR’s employees and agents shall not be entitled to claim or receive from the HHSC any vacation, sick leave, retirement, workers’ compensation, unemployment insurance, or other benefits provided to HHSC employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR’S performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR’S employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR’S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to HHSC prior to commencing any performance under this Agreement. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under Section 103-53, Hawaii Revised Statutes and paragraph 20 of these General Conditions.
3. **PERSONNEL REQUIREMENTS.**
 - a. The CONTRACTOR shall secure, at the CONTRACTOR’s own expense, all personnel required to perform this Agreement.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR’s employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under Federal, State or County law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied. Where the facility is accredited by The Joint Commission, CONTRACTOR agrees to meet any Joint Commission standards that are applicable to CONTRACTOR.
4. **CONTRACTOR EXCLUSION FROM FEDERAL PROGRAMS.** CONTRACTOR affirmatively states that it and none of its employees, agents or subcontractors performing services or providing goods pursuant to this Agreement are excluded from participation in federal health care programs, as defined in the Social Security Act (Section 1128 and 1128A), and other federal laws and regulations relating to health care. CONTRACTOR has an affirmative duty to verify the accuracy of this statement at least annually and to inform HHSC in the event it is discovered that it is no longer true. HHSC reserves the right to verify that the above statements are true and to immediately cancel this Agreement in the event they are not true.
5. **NONDISCRIMINATION.** No person performing work under this Agreement, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable Federal, State, or County law.
6. **CONFLICTS OF INTEREST.** The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR’s performance under this Agreement.
7. **SUBCONTRACTS AND ASSIGNMENTS; CHANGE OF NAME.**
 - a. **No assignment without consent.** The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR’S duties, obligations, or interests under this Agreement and no such assignment or subcontract shall be effective unless (1) the CONTRACTOR obtains the prior written consent of HHSC and (2) the CONTRACTOR’S assignee or subcontractor submits to HHSC a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any,

levied or accrued under State law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Agreement shall be effective unless and until the assignment is approved by HHSC.

- b. Recognition of a successor in interest. When in the best interests of HHSC, a successor in interest may be recognized in an assignment agreement in which HHSC, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Agreement but waives all rights under this Agreement as against HHSC; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Agreement with HHSC, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Agreement with the CONTRACTOR to effect such a change of name. The amendment to this Agreement changing the CONTRACTOR'S name shall specifically indicate that no other terms or conditions of this Agreement are thereby changed.

8. **INDEMNIFICATION AND DEFENSE.** The CONTRACTOR shall defend, indemnify and hold harmless HHSC, the contracting facility and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefore, arising out of or resulting from any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement for any reason.

9. **LIQUIDATED DAMAGES.** When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 11 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the HHSC the amount, if any, set forth in this Agreement per calendar day from the date set for cure until either (i) the HHSC reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under paragraph 11.d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay. This paragraph is of no force and effect unless the amount of liquidated damages is specified in the Agreement.

10. **SUSPENSION OF AGREEMENT.** HHSC reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

- a. Order to stop performance. The head of the purchasing agency may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Agreement. This order shall be for a specified period of time not exceeding sixty (60) days unless the parties agree to a different period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Agreement at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any other period to which the parties shall have agreed, the head of the purchasing agency shall either:

- (1) Cancel the stop performance order; or
- (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Agreement.

- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery or performance schedule or contract price, or both, and the Agreement shall be modified in writing accordingly, if:

- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Agreement and
- (2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.

- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provisions of this Agreement.

11. TERMINATION FOR DEFAULT.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or otherwise fails to timely satisfy the Agreement provisions, or commits any other substantial breach of this Agreement, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, such officer may terminate the CONTRACTOR's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate. The CONTRACTOR shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Agreement and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the State or the HHSC has an interest.
- c. Compensation. Payment for completed goods and services delivered and accepted by the HHSC shall be at the price set forth in the Agreement. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set an amount. The HHSC may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect the HHSC against loss because of outstanding liens or claims and to reimburse the HHSC for the excess costs expected to be incurred by the HHSC in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Agreement in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and failure arises out of causes such as; acts of God; acts of a Public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Agreement. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Agreement, the delivery schedule shall be revised accordingly, subject to the rights of the HHSC under this Agreement. As used in this paragraph the term "subcontractor means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR's right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 11.d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 12.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Agreement.

12. TERMINATION FOR CONVENIENCE BY HHSC.

- a. Termination for convenience of goods and services agreements. Pursuant to applicable State law and regulations (including, but not limited to, Hawaii Revised Statutes (HRS) Chapters 103D and 103F, and Hawaii Administrative Rules (HAR) Title 3, Chapter 125, Section 3-125-21), the head of the purchasing agency may, when the interests of HHSC so require, terminate this Agreement in whole or in part, for the convenience of HHSC. HHSC shall give written notice of the termination to the CONTRACTOR specifying the part of the Agreement terminated and when such termination becomes effective. HHSC shall exercise its rights under this paragraph in good faith and only when circumstances subsequent to the signing of this Agreement are changed to the extent that continuation of the Agreement is not in the best interest of HHSC. Such termination shall not be arbitrary or capricious.
- b. CONTRACTOR's obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to HHSC. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to HHSC in the manner and to the extent directed by the head of the purchasing agency:
- (1) Any completed goods or work product; and
 - (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Agreement; and
 - (3) The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which the HHSC has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that HHSC has breached the Agreement by exercise of the termination for convenience provision.
- d. Compensation.
- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 12.d.(3) below.
 - (2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Agreement price plus settlement costs reduced by payments previously made by HHSC, the proceeds of any sales of goods and manufacturing materials under subparagraph 12.c, and the Agreement price of the performance not terminated.
 - (3) Absent complete agreement under subparagraph 12.d.(2) the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 12.d.(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Agreement;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have been sustained a loss if the entire Agreement would have completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Subject to the prior approval of the Procurement Officer, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 12.b. These costs must not include costs paid in accordance with subparagraph 12.d.(3)(B). Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with subparagraph 12.d.(3)(B).
 - (D) The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the total Agreement price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 12.c.(3) and the Agreement price of performance not terminated.
- e. HAR Chapter 3-123. Costs claimed, agreed to, or established under subparagraphs 12.d.(2) and 12.d.(3) above shall be in accordance with HAR Chapter 3-123.

13. CHANGE ORDERS TO GOODS AND SERVICES AGREEMENTS. A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the below "change clause" authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

- a. Changes Clause.
- (1) Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the contract; and
 - (B) Changes in the time of performance of the contract that do not alter the scope of the contract work.
 - (2) Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this contract, an adjustment shall be made and the contract modified in writing accordingly.
 - (A) Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the Price Adjustment Clause of this Agreement. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with the Price Adjustment Clause.
 - (B) Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the contract as changed, provided that the head of the purchasing agency or designee, within fourteen days after

the changed word commences, makes the provisional adjustments in time as the head of the purchasing agency deems reasonable.

The right of the CONTRACTOR to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the Agreement.

- (3) Time period for claim. Except as may be provided otherwise by section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten days after receipt of a written change order, unless such period for filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.
- (4) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this contract.
- (5) Other claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the contract or for breach of contract.

14. MODIFICATIONS OF AGREEMENT.

- a. In writing. Any modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be made by written amendment to this Agreement and all appropriate adjustments signed by the CONTRACTOR and HHSC. Change orders shall be made in accordance with paragraph 13 herein. Notice to any surety is not required.

Modifications may include any one or more of the following:

- (1) Drawings, designs, or specifications, for the goods to be furnished;
 - (2) Method of shipment or packing;
 - (3) Place of delivery;
 - (4) Description of services to be performed;
 - (5) Time of performance (i. e., hours of the day, days of the week, etc.);
 - (6) Place of performance of the services; or
 - (7) Other provisions of the contract accomplished by mutual action of the parties to the contract.
- b. No oral modification. No oral modification, alteration, amendment, change or extension of any term, provision or condition of this Agreement shall be permitted or acknowledged.
 - c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Agreement, an adjustment shall be made and this Agreement modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Agreement or as negotiated.
 - d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Agreement and the claim are not made prior to final payment under this Agreement.
 - e. Other claims not barred. In the absence of a written modification to the Agreement, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Agreement or for a breach of contract.
 - f. Head of purchasing agency approval. If this is a professional services agreement awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension of this Agreement which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) of the initial Agreement price must receive the prior approval of the head of the purchasing agency.
 - g. Tax clearance. HHSC may, at its discretion, require the CONTRACTOR to submit to HHSC, prior to HHSC's approval of any modification, alteration, amendment, change or extension of any term, provision or condition of the Agreement, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid.
 - h. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement may only be made with the approval of the head of the purchasing agency. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.

- 15. VARIATIONS IN QUANTITY FOR DEFINITE QUANTITY AGREEMENTS.** Upon the agreement of HHSC and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in the Agreement, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Agreement or that it would not be practical to award another agreement.

- 16. VARIATIONS IN QUANTITY FOR INDEFINITE QUANTITY AGREEMENTS.** When an Agreement provides for indefinite goods and/or services the Agreement should state:

- a. The minimum quantity, if any, HHSC is obligated to order and the CONTRACTOR is to provide.
- b. Whether there is a quantity that HHSC expects to order and how this quantity relates to any minimum or maximum quantities that may be ordered under the Agreement.
- e. Any maximum quantity HHSC may order and the CONTRACTOR must provide.
- f. Whether HHSC is obligated to order its actual requirements under the Agreement, or in the case of a multiple award as defined in Section 3-122-145, HAR, that HHSC will order its actual requirements from the contractors under the multiple award subject to any minimum or maximum quantity stated.

17. PRICE ADJUSTMENT.

- a. Price adjustment. Any adjustment in the Agreement price pursuant to a provision in this Agreement shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance;
 - (2) By unit prices specified in the Agreement or subsequently agreed upon before commencement of the pertinent performance;
 - (3) By the costs attributable to the events or situations covered by the provision, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon before commencement of the pertinent performance;
 - (4) In such other manner as the parties may mutually agree upon before commencement of the pertinent performance; or
 - (5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), Hawaii Revised Statutes.
- b. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312, HRS. The submission of any cost or pricing data shall be made for any price adjustment subject to the provisions of subchapter 15, chapter 3-122. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraph (a)(1) through (a)(4) shall be issued within ten days after agreement on the method of adjustment.

18. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

- a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such officer) requiring performance changes within the scope of the Agreement constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or a extension of time for completion, the CONTRACTOR shall continue with performance of the Agreement in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:
 - (1) Written notice required. The CONTRACTOR shall give written notice to the head of the purchasing agency:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Written thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance or
 - (C) Within such further time as may be allowed by the head of the purchasing agency in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The Head of the Purchasing Agency, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable.
 - (3) Basis must be explained. The notice required by subparagraph 18a(1) must describe as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages or an extension or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to HHSC, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding any State officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provisions of the Agreement and these General Conditions.

19. COST AND EXPENSES. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Agreement shall be subject to the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for State officers and employees in the executive branch who are excluded from collective bargaining coverage.
- d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Agreement are not entitled to per diem or transportation expense reimbursement unless explicitly specified in the Agreement.

20. PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE.

- a. Original invoices required. All payments under this Agreement shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Agreement have been performed by the CONTRACTOR according to the Agreement.
- b. Payment only for work under contract. HHSC is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Agreement and any amendments or change orders thereto. All CONTRACTORS must follow paragraph 14, Modifications of Agreement or paragraph 13, Change Orders to Goods and Services Agreements and must have proper authorization before performing work outside the original Agreement.

21. PROMPT PAYMENT OF SUBCONTRACTORS.

- a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.
- b. Final payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in paragraph (d), and:
 - (1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or
 - (2) The following has occurred:
 - (A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONTRACTOR and the surety, as provided for in section 103D-324, HRS; and
 - (B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in paragraph (b) and section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated paragraph (2) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractors license board for action under section 444-17(14), HRS.
- d. A properly documented final payment request from a subcontractor, as required by paragraph (c), shall include:
 - (1) Substantiation of the amounts requested;
 - (2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:
 - (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;
 - (C) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
 - (D) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and
 - (3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the CONTRACTOR within seven days after receipt, with a statement identifying the defect.

- e. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under paragraph (c); provided that any such payments withheld shall be withheld by the procurement officer.

22. CONFIDENTIALITY OF MATERIAL.

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the HHSC. It is acknowledged and agreed that all of the trade secrets, business plans, marketing plans, know how, data, contracts, including this Agreement, documents, scientific and medical concepts, billing records, personnel records, medical records of any kind, and referral sources for existing or future services, products, operations, management, business, pricing, financial status, valuations, business plans, goals, strategies, objectives and agreements of HHSC and any of its facilities, affiliates or subsidiaries, and all patient information in any form, whether written, verbal or electronic are confidential ("Confidential Information"); provided, however, that Confidential Information, with the exception of patient information, shall not include information that is in the public domain.
- b. All information, data, or other material provided by the CONTRACTOR to the HHSC is subject to the Uniform Information Practices Act, chapter 92F, HRS, as modified by chapter 323F, HRS.

23. CORPORATE COMPLIANCE PROGRAM. A description of the Corporate Compliance Program of HHSC, including orientation materials, is posted on the HHSC internet site (www.hhsc.org). The CONTRACTOR, by signing this contract, acknowledges that it has read said description, and that the CONTRACTOR knows of the fact and substance of the Corporate Compliance Program, which governs operations at all facilities of the HHSC. The CONTRACTOR understands and agrees that employees, agents, and contractors performing any services at any of the HHSC facilities shall be fully subject to such Corporate Compliance Program, as may be amended from time to time, as well as all federal program requirements and applicable policies and procedures of HHSC and its facilities. The Corporate Compliance Program requires periodic training, including an orientation program, of all people who provide financial, business office, personnel, coding, medical records information systems and clinical services in the facility. The CONTRACTOR agrees to cause its employees, agents and contractors who provide financial, business office, personnel, coding, medical records information systems and/or clinical services at any of the HHSC facilities to review the posted orientation materials and participate in any compliance training programs HHSC may require.

24. BUSINESS ASSOCIATE; PRIVACY AND SECURITY ADDENDUM. By signing this Agreement CONTRACTOR acknowledges that it is a Business Associate of HHSC within the meaning of the federal privacy and security laws as stated in 45 C.F.R. Parts 160 and 164, Subparts A, C, and E. CONTRACTOR further acknowledges that it has read the Privacy and Security Addendum, which is posted on the HHSC internet (www.hhsc.org) and is applicable to all Business Associates. Said Privacy Addendum is hereby incorporated by reference and made a part of this agreement as if fully repeated herein. By signing this contract, CONTRACTOR agrees to fully comply with, and be bound by, all the terms set forth in the Privacy and Security Addendum, as it may be amended from time to time.

25. PUBLICITY. The CONTRACTOR shall not refer to the HHSC or any office, agency, or Officer thereof, or any HHSC employee, including the head of the purchasing agency, the Agency procurement officer, the HHSC Board of Directors, or to the services or goods, or both, provided under this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of HHSC. All media contacts with the CONTRACTOR about the subject matter of this Agreement shall be referred to the Agency Procurement officer.

26. OWNERSHIP RIGHTS AND COPYRIGHT. HHSC shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Agreement and all such material shall be considered "works for hire." All such materials shall be delivered to HHSC upon expiration or termination of this Agreement. HHSC, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Agreement.

27. INSURANCE. During the term of this Agreement, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to HHSC under this Agreement. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by HHSC, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and THREE MILLION DOLLARS (\$3,000,000) in the aggregate, or such greater amount as may be required from time to time by HHSC. Said policies shall provide that HHSC shall receive not less than thirty (30) days notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from HHSC. HHSC shall be listed as an additional insured on all policies. Prior to the commencement of this Agreement, CONTRACTOR shall provide HHSC with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for CONTRACTOR shall provide HHSC with certificates of insurance evidencing the foregoing coverage and provisions. HHSC reserves the right to request a certified copy of the policies. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Agreement and HHSC shall thereafter have the options of pursuing remedies for such breach and/or immediate termination of this Agreement.

28. LIENS AND WARRANTIES.

- a. Liens. All products provided under this Agreement shall be free of all liens and encumbrances.
 - b. Warranties for products and services. In the event this Agreement is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to HHSC. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Agreement, schedules, publications of CONTRACTOR and/or any order(s) and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of HHSC. The Warranty period shall commence after Acceptance, as defined in this Agreement. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Agreement but in any event such warranty period shall not be less than one (1) year.
29. ACCESS TO BOOKS AND RECORDS AND AUDIT BY HHSC. If the value or cost of Services rendered to HHSC pursuant to this Agreement is Ten Thousand Dollars (\$10,000.00) or more over a twelve-month period, CONTRACTOR agrees as follows:
- a. Until the expiration of four (4) years after the furnishing of such services, CONTRACTOR shall, upon written request, make available to the Secretary of the Department of Health and Human Services (the "Secretary"), the Secretary's duly-authorized representative, the Comptroller General, or the Comptroller General's duly-authorized representative, such books, documents, and records as may be necessary to certify the nature and extent of the cost of such Services; and
 - b. If any such Services are performed by way of subcontract with another organization and the value or cost of such subcontracted Services is Ten Thousand Dollars (\$10,000.00) or more over a twelve month period such subcontract shall contain and CONTRACTOR shall enforce a clause to the same effect as paragraph 28.a. above. The availability of CONTRACTORS' books, documents and records shall be subject to all applicable legal requirements, including such criteria and procedures for obtaining access that may be promulgated by the Secretary. The provisions of paragraphs 28.a and 28.b. shall survive the expiration or other termination of this Agreement regardless of the cause of such termination.
 - c. HHSC may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor or prospective subcontractor which are related to this Agreement.
30. ANTITRUST CLAIMS. The HHSC and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to HHSC any and all claims for overcharges as to goods and materials purchased in connection with this Agreement, except as to overcharges which result from violations commencing after the price is established under this Agreement and which are not passed on to the HHSC under an escalation clause.
31. GOVERNING LAW. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Hawaii.
32. COMPLIANCE WITH LAWS. The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Agreement. This specifically includes Sections 103-55 and 103-55.5, Hawaii Revised Statutes, dealing with wages, hours and working conditions of employees of contractors providing services or construction.
33. CAMPAIGN CONTRIBUTIONS. CONTRACTOR acknowledges that it is unlawful under Section 11-205.5, Hawaii Revised Statutes, unless specifically permitted under that law, for CONTRACTOR at any time between the execution of this Agreement through the completion of the Agreement to: (a) directly or indirectly make any contribution or to promise expressly or impliedly to make any contribution to any political party, committee or candidate or to any person for any political purpose or use; or (b) knowingly solicit any contribution from any person for any purpose during any period.
34. DISPUTES. Disputes shall be resolved in accordance with Section 103D-703, HRS and Chapter 3-126, Hawaii Administrative Rules.
35. ENTIRE AGREEMENT. This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the HHSC and the CONTRACTOR relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the HHSC and the CONTRACTOR other than as set forth or as referred to herein.
36. COUNTERPARTS. This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile/electronic executions or a combination thereof shall be construed together and shall constitute one and the same Agreement.
37. SEVERABILITY. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
38. WAIVER. The failure of HHSC to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of HHSC's right to enforce the same in accordance with this Agreement. The fact that HHSC specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of HHSC's rights or the CONTRACTOR's obligations under the law.

39. **DISCOUNTS AND REBATES.** CONTRACTOR hereby acknowledges its obligations to comply with any and all requirements imposed upon it as a seller under 42 U.S.C. Sec. 1320a-7b(b)(3)(A) and 42 C.F.R. Sec. 1001.952(h) Discounts.
40. **ACCEPTANCE OF GOODS AND SERVICES.** HHSC shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with the specifications, shall relieve CONTRACTOR of any obligations under this Agreement or impair any rights or remedies of HHSC.
41. **OBSOLETE PARTS/LONGTERM PARTS AVAILABILITY (Goods and Equipment Agreements Only).** Contractor shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. Contractor shall provide advanced notification in writing to the HHSC Technical Representative of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. Contractor shall notify HHSC of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Agreement and shall work with HHSC to determine the need to stockpile any parts for the likely life of the product and offer those parts to HHSC prior to the actual discontinuance. Contractor shall extend opportunities to HHSC to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

END OF GENERAL CONDITIONS